

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2009-0623-07E
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

2009 JUN 23 PM 4:04

OFFICE OF
ADMINISTRATIVE LAWAGENCY WITH RULEMAKING AUTHORITY
Food and AgricultureAGENCY FILE NUMBER (if any)
PH09036**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY		ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/ Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Oriental Fruit Fly Interior Quarantine		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT	
TITLE(S) 3		AMEND 3423(b)	
		REPEAL	
3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))			
<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)			
<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____			
<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§11343.4, 11346.1(d); Cal. Code Regs., title 1, §100) <input type="checkbox"/> Effective 30th day after filing with Secretary of State <input checked="" type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____			
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY <input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON Stephen S. Brown		TELEPHONE NUMBER (916) 654-1017	FAX NUMBER (Optional) (916) 654-1018
		E-MAIL ADDRESS (Optional) sbrown@cdfa.ca.gov	

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE

TYPED NAME AND TITLE OF SIGNATORY

Robert L. Wynn, Statewide Coordinator, Pierce's Disease Control Program

For use by Office of Administrative Law (OAL) only

Amend Section 3423(b) to read:

(b) Area Under Quarantine.

~~(1) In Los Angeles and Orange counties, in the Lakewood area: Beginning at the intersection of Atlantic Avenue and State Highway 90; then, starting easterly along State Highway 90 to its intersection with Firestone Boulevard; then, southeasterly along Firestone Boulevard to its intersection with Bloomfield Avenue; then, southerly along Bloomfield Avenue to its intersection with Alondra Boulevard; then, easterly along Alondra Boulevard to its intersection with Carmenita Road; then, southerly along Carmenita Road to its intersection with Artesia Boulevard; then, easterly along Artesia Boulevard to its intersection with Valley View Avenue; then, southerly along Valley View Avenue to its intersection with Valley View Street; then, southerly along Valley View Street to its intersection with Katella Avenue; then, westerly along Katella Avenue to its intersection with Lexington Drive; then, southerly along Lexington Drive to its intersection with the boundary line of the Los Alamitos Army Airfield; then, starting westerly along said boundary line to its intersection with the boundary line of Old Ranch Country Club; then, starting westerly along said boundary line to its intersection with Seal Beach Boulevard; then, starting southerly along Seal Beach Boulevard to its intersection with State Highway 22; then, starting westerly along State Highway 22 to its intersection with E 7th Street; then, westerly along E 7th Street to its intersection with Cherry Avenue; then, starting northerly along Cherry Avenue to its intersection E Anaheim Street; then, westerly along E Anaheim Street to its intersection with W Anaheim Street; then, westerly along W Anaheim Street to its intersection with US Interstate 710; then, northerly along US Interstate 710 to its intersection with State Highway 1; then, starting westerly along State Highway 1 to its intersection with State Highway 103; then, northeasterly along State Highway 103 to its intersection with W Willow Street; then, westerly along W Willow Street to its intersection with E Sepulveda Boulevard; then, starting northwesterly along E Sepulveda Boulevard to its~~

~~intersection with Wilmington Avenue; then, northeasterly along Wilmington Avenue to its intersection with US Interstate 405; then, starting westerly along US Interstate 405 to its intersection with Avalon Boulevard; then, starting northeasterly along Avalon Boulevard to its intersection with E Del Amo Boulevard; then, easterly along E Del Amo Boulevard to its intersection with S Central Avenue; then, northerly along S Central Avenue to its intersection with W Alondra Boulevard; then, easterly along W Alondra Boulevard to its intersection with S Wilmington Avenue; then, northerly along S Wilmington Avenue to its intersection with N Wilmington Avenue; then, northerly along N Wilmington Avenue to its intersection with W Rosecrans Avenue; then, easterly along W Rosecrans Avenue to its intersection with E Rosecrans Avenue; then, easterly along E Rosecrans Avenue to its intersection with N Long Beach Boulevard; then, northerly along N Long Beach Boulevard to its intersection with US Interstate 105; then, southeasterly along US Interstate 105 to its intersection with Atlantic Avenue; then, northeasterly along Atlantic Avenue to the point of beginning.~~

[Reserved]

Note: Authority: Sections 407, 5301, 5302, and 5322, Food and Agricultural Code.
Reference: Sections 5301, 5302, and 5322, Food and Agricultural Code.

June 19, 2009

FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture finds that an emergency exists, and that the foregoing amendment of a regulation is necessary for an immediate action to avoid serious harm to the public peace, health, safety or general welfare, within the meaning of Government Code Section 11342.545 and Public Resources Code Section 21080. The Department does not have a record of any person requesting a notice of regulatory actions under Government Code Section 11346.4(a)(1). Therefore, the provisions of Government Code Section 11346.1(a)(2) do not appear to be applicable to this emergency action as no one has requested such notice. Further, the Secretary believes that this emergency clearly poses such an immediate, serious harm that delaying action to give the notice pursuant to Government Code Section 11346.1 or allow five calendar days to allow public comment pursuant to Government Code Section 11349.6 would be inconsistent with the public interest, within the meaning of Government Code Section 11349.6(b).

Specific Facts Showing the Need for Immediate Action

The specific purpose of Section 3423 is to provide for the State to regulate the movement and possible carriers of Oriental fruit fly from the area under quarantine to prevent the artificial spread of the fly to noninfested areas to protect California's agricultural industry.

The factual basis for the determination by the Department that amendment of Section 3423 is necessary is as follows:

Oriental fruit fly is a destructive insect pest of innumerable commercial agricultural crops. Fruits (including nuts, dates, and berries), many kinds of vegetables, and the fruiting bodies of many wild and ornamental plants are known to be hosts or possible hosts of the Oriental fruit fly. Larval feeding reduces the interior of fruit to a rotten mass. Egg punctures admit decay organisms that cause tissue breakdown. Damaged fruit is

generally unfit for human consumption. Movement of hosts infested with the larvae of the fly can artificially spread the fly.

Effective August 25, 2008

Three adult male Oriental fruit flies were trapped in the Lakewood area of Los Angeles County on August 13, 2008. On August 15, 2008, two male Oriental fruit flies were trapped in the Lakewood area of Los Angeles County. On August 16, 2008, an adult male Oriental fruit fly was trapped in the Lakewood area of Los Angeles County. On August 18, 2008, two additional Oriental fruit flies were trapped in the Lakewood area of Los Angeles County. The detection of multiple male Oriental fruit flies was indicative of an incipient infestation of Oriental fruit fly in the Lakewood area of Los Angeles County.

This amendment of Section 3423(b) established approximately 74 square miles surrounding the infestation in the Lakewood area of Los Angeles County as the area under quarantine for Oriental fruit fly.

Effective October 14, 2008

On September 26, 2008, an adult male Oriental fruit was trapped in the Lakewood area close to the epicenter of the known infestation. On October 2, 2008, another Oriental fruit fly was trapped to the Lakewood area but it was located approximately one mile to the southeast of the epicenter of the infestation. It was necessary to expand the regulated area to the east and the south. This amendment to the regulated area included a portion of Orange County to the east.

This amendment of Section 3423(b) added approximately 17 square miles to the established regulated area (approximately 74 square miles) surrounding the infestation in the Lakewood area of Los Angeles and Orange counties as the area under quarantine for Oriental fruit fly. The total regulated area was approximately 91 square miles.

Effective October 17, 2008

On September 26, 2008, an adult male Oriental fruit was trapped in the Lakewood area close to the epicenter of the known infestation. On October 8, 2008, another Oriental fruit fly was trapped to the Lakewood area but it was located approximately one mile to the west of the epicenter of the infestation. It was necessary to expand the regulated area to the west and the south.

This amendment of Section 3423(b) added approximately 18 square miles to the established regulated area (approximately 91 square miles) surrounding the infestation in the Lakewood area of Los Angeles and Orange counties as the area under quarantine for Oriental fruit fly. The total regulated area was increased to approximately 109 square miles.

This proposed amendment of Section 3423(b) will remove the approximate 109 square miles surrounding the infestation in the Lakewood area of Los Angeles and Orange counties from the area under quarantine for Oriental fruit fly. The fly was eradicated from this area on June 21, 2009 (memo dated June 16, 2009 from John Hooper to John Connell); therefore, it is no longer necessary to regulate the movement of hosts and possible carriers of the fly from this area. It is necessary to amend this regulation on an emergency basis to remove the quarantine on the Lakewood area and remove restrictions on the movement of hosts and possible carriers that are unnecessary. If these unnecessary restrictions were continued, it would create an unnecessary burden for the general public and businesses in that area. Host crops are being or will be harvested in this area soon. If the restrictions were continued, those members of the public who have grown host fruits and vegetables would be required to process the commodities before the fruits and vegetables can be moved or given away or they would have to destroy the host fruits and vegetables. Therefore, it is necessary to amend this regulation to remove the regulated area in the Lakewood area of Los Angeles and Orange counties as an emergency action.

Oriental fruit fly has been established in Hawaii, since 1946, where it is a major pest of agriculture, particularly on mangoes, avocados and papayas. Maggots have been found in over 125 kinds of fruits and vegetables in Hawaii alone. A great number of crops in California are threatened by the introduction of this pest, including apples, apricots, avocados, cherries, citrus, figs, nectarines, peaches, pears, plums and tomatoes. It has been estimated that the cost of not eradicating Oriental fruit fly in California would range from \$44 to \$176 million in crop losses, additional pesticide use, and quarantine requirements. Oriental fruit fly has been introduced into California a number of times, through the movement of prohibited host fruits and vegetables into the State, and has been eradicated.

Females lay eggs in groups of 3 to 30 under the skin of host fruits and vegetables; the female can lay more than 1,000 eggs in her lifetime. Time taken for development depends upon the ambient air temperature. Maggots (larvae) tunnel through the fruit feeding on the pulp, shed their skins twice, and emerge through exit holes in approximately 10 days. The larvae drop from the fruit and burrow 2 to 3 cm. into the soil to pupate. In 10 to 12 days adults emerge from these puparia. The newly emerged adult females need 8 to 12 days to mature sexually prior to mating and egg-laying. Breeding is continuous, with several annual generations. Adults live 90 days on the average and feed on honeydew, decaying fruit, plant nectar, bird dung, and other substances. The adult is a strong flyer recorded to travel up to 30 miles in search of food and sites to lay eggs. This ability allows the fly to infest new areas very quickly. Transport of fruit infested with eggs or larvae also allows the fly to spread artificially and infest new areas very quickly.

If the fly were allowed to spread and become established in host fruit production areas, California's agricultural industry would suffer losses due to decreased production of marketable fruit, increased pesticide use, and loss of markets if the United States Department of Agriculture (USDA) or other states or countries enact quarantines against California products which can host and carry the fly larvae and pupae.

The quarantine area includes the initial detection sites as the epicenters and a buffer zone extending approximately 4-1/2 miles in each direction from the epicenters. A buffer zone is necessary because the fly can spread naturally (as well as artificially in infested hosts). The boundary line was drawn jointly by the United States Department of Agriculture, the California Department of Agriculture, and the agricultural commissioners of Los Angeles and Orange counties, and the quarantine area is considered the minimum area around the initial detection sites which should be regulated to prevent artificial spread of Oriental fruit fly to noninfested areas.

Because the Oriental fruit fly continues to be introduced into California, the Department will retain the regulation text with the exception of deleting the regulated area under subsection 3423(b) and noting it is "reserved."

Authority and Reference Citations

Section 3423(b):

Authority: Sections 407, 5301, 5302, and 5322, Food and Agricultural Code.

Reference: Sections 5301, 5302, and 5322, Food and Agricultural Code.

Informative Digest

Existing law provides that the Secretary may establish, maintain, and enforce such regulations, as he deems necessary to protect the agricultural industry of California from the spread of pests. The Secretary may make and enforce such regulations as he deems necessary to prevent any plant or thing which is, or is liable to be, infested by or which might act as a carrier of any pest, from passing over any quarantine boundary which is established.

Section 3423. Oriental Fruit Fly Interior Quarantine.

Existing regulations established a regulated area of approximately 109 square miles surrounding the Oriental fruit fly infestation epicenter in the Lakewood area of Los Angeles and Orange counties. This amendment will remove the regulated area for Oriental fruit fly from the approximately 109 square miles surrounding the Lakewood

area of Los Angeles and Orange counties. The effect of this amendment is to remove authority for the State to regulate the movement of hosts and possible carriers of Oriental fruit fly within and from the Lakewood area because it is no longer necessary to protect California's agricultural industry since the fly has been eradicated from that area.

Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that Section 3423 does not impose a mandate on local agencies or school districts, except that agricultural commissioners of counties under quarantine have a duty to enforce it. No reimbursement is required under Section 17561 of the Government Code because this amendment will remove that portion of the Lakewood area of Los Angeles and Orange counties that was in the area under quarantine; therefore, enforcement will no longer be necessary. There are no mandated costs associated with the removal of the Lakewood area from the regulation.

Cost Estimate

The Department has also determined that no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action.